

REMARKS/ARGUMENTS

1.) Premature Final Office Action

In the Final Office Action, the Examiner again rejected all claims and asserted that "Applicant's amendment necessitated the new ground(s) of rejection." In Applicant's prior response, the following amendments were made to claim 44:

44. A method of load control between a transport protocol sender and transport protocol receiver in a radio communications system, the method comprising the step of:

transferring to said transport protocol receiver one or more signals carrying radio resource data from a radio resource management entity [[of]] located in a radio network control node intermediate to said transport protocol sender and said transport protocol receiver, said transport protocol receiver using said radio resource data received from the radio resource management entity to dynamically adapt transport protocol load to link state information between the transport protocol sender and the transport protocol receiver.

The amendment to claim 44 only emphasized that the radio resource data is received by the transport protocol receiver "from the radio resource management entity." That aspect to the claimed invention was already inherent in the claim because the claim previously included the limitation of "transferring to said transport protocol receiver . . . radio resource data from a radio resource management entity." Therefore, the amendment did not add any substantive matter to the claim.

Furthermore, in the Examiner's "new" reasons for rejection, as well as his "Response to [Applicant's] Arguments, he only points to "Applicant's Admitted Prior Art," referring to page 4 of the specification, for the proposition that "although Rautiola discloses a radio resource management located in [a] mobile unit, it would not be novel to place this particular feature in the radio resource management entity." Not only did Applicant's amendment of claim 44 not add any new substantive matter, the Examiner's "new" reasons for rejection do not add anything substantive to his prior reasons, much less directly address the Applicant's other particularly-stated reasons for traversing the Examiner's rejection. It is improper for the Examiner to make the present Office Action "final" in view of a "new" basis of rejection, particularly when no substantive claim

amendments were made and the Examiner. The Applicant will address the Examiner's "new" reasons for rejection hereinafter, but the finality of the present Office Action should be withdrawn.

2.) Claim Rejections – 35 U.S.C. §103(a)

The Examiner has rejected claims 44-49 and 53-67 as being unpatentable over Ameigeiras, *et al.* (U.S. Patent Publication No. 2004/0052234) in view of Rautiola, *et al.* (U.S. Patent No. 6,853,851) in view of Aweya (U.S. Patent No. 7,047,312) and further in view of "Applicant's Admitted Prior Art (hereinafter AAPA);" and claims 50-52 as being unpatentable over Ameigeiras in view of Rautiola, Aweya, AAPA and further in view of Cunny (U.S. Patent Publication No. 2003/0179720). The Applicant traverses the rejections.

Claims 44-49 and 53-67

Claim 44 recites:

44. A method of load control between a transport protocol sender and transport protocol receiver in a radio communications system, the method comprising the step of:

transferring to said transport protocol receiver one or more signals carrying radio resource data from a radio resource management entity located in a radio network control node intermediate to said transport protocol sender and said transport protocol receiver, said transport protocol receiver using said radio resource data received from the radio resource management entity to dynamically adapt transport protocol load to link state information between the transport protocol sender and the transport protocol receiver. (emphasis added)

The Applicant's invention is directed to load control and radio resource management between a transport protocol sender and transport protocol receiver. A radio network control node, having a radio resource management entity, is located intermediate to the transport protocol sender and transport protocol receiver. As claim 44 recites, radio resource data is transferred from the radio resource management entity located in the radio network control node to the transport protocol receiver. The radio resource data is then used to dynamically adapt transport protocol load to link state information.

The Examiner alleges that Ameigeiras teaches a transport protocol receiver that uses data to dynamically adapt transport protocol load, referring to paragraph 15 thereof. The Examiner, however, misinterprets the teachings of Ameigeiras. As the Applicant previously argued, Ameigeiras merely discloses the retransmission of TCP segments. **In the present office action, the Examiner has failed to address that contention of Applicant.** Furthermore, as the Examiner acknowledges, Ameigeiras fails to teach the transfer of radio resource data from a radio resource management entity intermediate to a transport protocol sender and a transport protocol receiver. To overcome that deficiency, the Examiner looks to the teachings of Rautiola.

The Examiner points to Rautiola solely for the disclosure of "radio resource data." As the Examiner's arguments explicitly acknowledge, however, Rautiola only discloses a radio resource manager located in a user terminal which, inherently, cannot be in a radio resource management entity **intermediate to** a transport protocol sender and a transport protocol receiver. Therefore, Rautiola fails to overcome the deficiencies of Ameigeiras. **Again, in the present office action, the Examiner has failed to address that contention of Applicant.** Furthermore, as the Examiner acknowledges, Ameigeiras and Rautiola fail to teach "dynamically [adapting] transport protocol load to link state information between [a] transport protocol sender and [a] transport protocol receiver." To overcome that deficiency, the Examiner looks to the teachings of Aweya.

The Examiner points to Aweya as teaching "dynamically [adapting] transport protocol load to link state information between [a] transport protocol sender and [a] transport protocol receiver," which he reads on the disclosure of Aweya relating to a "window control schme." As the Applicant previously argued, Aweya merely discloses adapting a transport protocol load in response to an acknowledgement (ACK) packet; the ACK packet used to adapt the transport protocol load, however, is not analogous to the radio resource data received from a resource management entity located **intermediate to** a transport protocol sender and a transport protocol receiver. **As with the Applicant's arguments relating to the teachings of Ameigeiras and Rautiola, the Examiner has also failed in the present office action to address that contention of Applicant.**

Finally, the Examiner acknowledges in the present office action that Ameigeiras, Rautiola and Aweya all fail to teach a "radio resource management entity [] located in a radio network control node." If the Examiner can acknowledge that those references fail to teach such a radio resource management entity, it is axiomatic that those references do not teach "transferring to [a] transport protocol receiver one or more signals carrying radio resource data from [such] a radio resource management entity located in a radio network control node intermediate to [a] transport protocol sender and [a] transport protocol receiver, [wherein the] transport protocol receiver [uses the] radio resource data received from the radio resource management entity to dynamically adapt transport protocol load to link state information between the transport protocol sender and the transport protocol receiver." To overcome that deficiency of the cited references, the Examiner looks to the teachings of the Applicant's own specification. The Applicant's specification, however, does not state that the prior art includes the functions recited in claim 44. As noted *supra*, the Examiner has failed to point to any teaching in Ameigeiras, Rautiola and Aweya of the functions of "transferring to [a] transport protocol receiver one or more signals carrying radio resource data from a radio resource management entity located in a radio network control node intermediate to [a] transport protocol sender and [a] transport protocol receiver;" and "[using the] radio resource data received from the radio resource management entity to dynamically adapt transport protocol load to link state information between the transport protocol sender and the transport protocol receiver." None of the cited references sends radio resource data from a radio resource management entity located in a radio network control node intermediate to [a] transport protocol sender and [a] transport protocol receiver, wherein the radio resource data is then utilized to dynamically adapt transport protocol load to link state information between the transport protocol sender and the transport protocol receiver. Therefore, the Examiner has failed to establish a *prima facie* case of obviousness of claim 44.

Whereas claims 47, 53, 55, and 61 recite limitations analogous to those of claim 44, they are also not obvious in view of Ameigeiras, Rautiola, Aweya or "Applicant's Admitted Prior Art," either alone or in combination. Furthermore, whereas claims 45 and

46 are dependent from claim 44; claims 48 and 49 are dependent from claim 47; claim 54 is dependent from claim 53; claims 56-60 are dependent from claim 55; and claims 62-67 are dependent from claim 61, and include the limitations of their respective base claims, they are also not obvious in view of those references.

Claims 50-52

As established *supra*, the Examiner has not established a *prima facie* case of obviousness of claim 47 in view of Ameigeiras, Rautiola, Aweya and AAPA. Moreover, the Examiner has not pointed to any teaching in Cuny that would overcome the deficiencies in those references. Thus, whereas claims 50-52 depend from claim 47, and include the limitations thereof, those claims are not obvious over Ameigeiras, Rautiola, Aweya and AAPA in further view of Cuny.

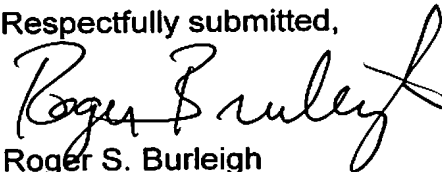
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CONCLUSION

In view of the foregoing remarks, the Applicant believes all of the claims currently pending in the Application to be in a condition for allowance. The Applicant, therefore, respectfully requests that the Examiner withdraw all rejections and issue a Notice of Allowance for claims 44-67.

The Applicant requests a telephonic interview if the Examiner has any questions or requires any additional information that would further or expedite the prosecution of the Application.

Respectfully submitted,



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